

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Stanley Sporkin
General Counsel

EXTENSION

NO.

DDA 81-0004/10

DATE

14 August 1981

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DDA

8/18

J

1 to 4/5

2.

3.

Executive Registry

19 AUG 1981

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If you have no
problem with the
Policy I will publish
it as a Headquarters
notice.

4.

~~DDCI~~

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ADCI

8/18

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EO/DDA

27 AUG 1981

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10.

General Counsel
7D-00 Hqs.

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12.

13.

14.

15.

7-10: This office will make the
necessary arrangements for publi-
cation as a Headquarters Notice.

Distribution:

0 - GC w/att

1 - OMS w/att

① DDA Subj w/att

EO/DDA/ba(27Aug81)

81-0004/10

Executive Registry
81-7063/11

OGC 81-05954

14 August 1981

MEMORANDUM FOR: *Acting* Director of Central Intelligence *[Signature]*
FROM: Stanley Sporkin
General Counsel *[Signature]*
SUBJECT: Malpractice Protection for Agency Medical
Personnel

1. As a result of the recent Inspector General's survey of the Office of Medical Services, a recommendation was made that a policy statement be issued by you describing the scope of malpractice protection for Agency medical personnel.

2. Forwarded herewith is a statement drafted to fulfill this requirement. It has been drafted with the participation of the Office of Medical Services and coordinated with the Deputy Director for Administration. ✓

[Redacted Signature Box]

Stanley Sporkin

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Attachment

PROTECTION FOR AGENCY MEDICAL PERSONNEL

The Agency's medical personnel, including physicians, nurses, psychologists, paramedics and other supporting personnel, are called upon to discharge a wide variety of responsibilities within the scope of their official duties. Agency medical personnel must often perform medical evaluations, conduct treatments, and render medical judgments and advice under circumstances in which personal liability might conceivably arise under traditional principles of law. It is appropriate that the precarious position in which Agency medical personnel might otherwise find themselves has been recognized and provisions have been enacted into law affording protection in this area.

Statute (10 USC §1089) provides that only an action against the United States under the Federal Tort Claims Act, as opposed to an action against a medical employee personally, is available to claimants alleging personal injury caused by negligent or wrongful acts or omissions of Agency medical personnel in their performance of medical or related health care functions within the scope of their employment. The Attorney General will defend such actions and, if necessary, may have an action filed in a state court removed to a federal court where the protective provision here discussed will be applied.

With a view to making malpractice protection comprehensive, the statute also provides for situations in which the Federal Tort Claims Act may not apply by authorizing the Director to indemnify medical personnel acting within the scope of their official duties in such situations. The Agency has determined to hold medical personnel harmless in situations not covered by the Federal Tort Claims Act and has embodied this determination in regulation HR

These provisions are intended to immunize Agency medical personnel from malpractice suits. The protection is designed to cover all potential financial liability that might arise out of the performance of official medical duties.

Agency medical personnel can be confident that they are acting within the scope of their official duties whenever they are performing duties in support of lawful Agency activities that have been assigned to them pursuant to regulation or by managerial direction. In cases that are not clearly within the scope of assigned duties, and in which authoritative guidance is not available, recognition of an official purpose and a reasonable relationship to assigned responsibilities form a basis on which to conclude that acting in response to a problem would be within the scope of official duties.

It is the responsibility of the Office of Medical Services to conduct preemployment and other medical evaluations incident

to Agency service, including medical evaluations of dependents. OMS may also conduct voluntary health maintenance examinations which have been determined to be appropriate for certain categories of employees. In addition, the Office may conduct preventive programs relating to health.

It is within the official duties of medical personnel of the Office of Medical Services to treat on-the-job injury or illness. This can include emergency diagnosis and first treatment of injury or illness that become necessary during working hours and that are within the competence of the professional staff and facilities of the Office. Also, treatment on the spot may be given for minor illnesses which temporarily interfere with an employee's comfort or ability to complete the workday, such as colds, headaches, and stomach upsets. In appropriate cases, OMS medical personnel will administer treatments and medications furnished by the employee and prescribed by his or her personal physicians.

In the overseas environment, OMS personnel bear additional responsibilities for treating personnel associated with the Agency. The Agency's authority for maintenance of medical facilities overseas extends to the provision of medical advice and treatment to employees and their dependents whenever use of Agency medical personnel and facilities are better able to provide requisite medical care in terms of quality, timeliness or other pertinent factors than is available from alternative sources. Persons associated with the Agency [redacted] context who are neither employees nor dependents may be given advice and treatment by Agency medical personnel whenever warranted by [redacted] equities, including maintenance of cover.

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Despite the breadth of the foregoing duties and responsibilities, however, it must be understood that there are limits to the scope of official duties. The malpractice protection that surrounds Agency medical personnel in the performance of their official duties does not extend to activities conducted on an employee's own time. It should be clear to all that activities specifically prohibited by law or regulation, such as restrictions on the conduct of intelligence activities, are not within the scope of official duties. Also, the extension of medical services to individuals under circumstances in which the Agency has no official interest or equity may result in a determination that such services are beyond the scope of official duty.

In conjunction with medical emergencies not within the scope of official duties, as, for example, emergencies encountered on an employee's own time away from Agency premises and having no connection with official duties, medical personnel may derive protection from "Good Samaritan" statutes enacted in many jurisdictions, including Virginia, Maryland and the District of Columbia. While there are variations between jurisdictions that

may be significant in particular cases, in general these statutes provide that a person (with specific provisions regarding certain medically trained persons), who in good faith renders emergency care or assistance at the scene of an accident or other emergency, shall not be liable for acts or omissions that are reasonably prudent and do not constitute gross negligence.